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#43

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE HONORABLE BOARD OF PATENT APPEALS AND INTERFERENCES

In re the application of: Kenji ONO

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I. REAL PARTY IN INTEREST

The real party in interest in the present appeal is Mr. Kenji Ono, the sole inventor in this application (no Assignment has been made with respect to the present application).

II. RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences regarding any application which is related to the present application.

III. STATUS OF CLAIMS

Claims 2 and 5-14 (set forth in Appendix A attached hereto) are pending. Claims 2 and 5-14 stand finally rejected.

The applicants are appealing the rejection of claims 2 and 5-14.

IV. STATUS OF AMENDMENTS FILED AFTER FINAL REJECTION

No Amendment has been filed in this application after the presently-appealed final rejection (dated March 8, 2002).

V. SUMMARY OF THE INVENTION AND THE APPLIED REFERENCES

The Invention

The present invention is directed to a self-propelled vehicle (specification, page 1, lines 5-6) which can be used to transport a person or to carry a large load of cargo (specification, page 1, lines 6-8; page 4, lines 4-8; page 26, lines 15-17), which is particularly easily and safely boarded by handicapped persons and elderly persons (specification, page 22, lines 13-16), which is particularly effective in safely transporting handicapped persons and elderly persons (specification, page 11, lines 1-5), and which is particularly easily and safely de-boarded by such handicapped persons and elderly persons (specification, page 22, lines 13-16).

According to the present invention, the self-propelled vehicle comprises a driving portion and a steering portion (specification, page 16, lines 18-20). The driving portion can be reciprocally activated to selectively run the vehicle forward or backward (specification, page 18, lines 17-19).

In the context of the embodiment shown in Fig. 1, the driving portion is an electric

motor 19 (specification, page 18, lines 1-2) which can be reciprocally activated to run the vehicle forward and backward (specification, page 18, lines 17-19) by driving the front wheel (specification, page 14, lines 4-5). The operator rotates the electric motor 19 forward by gripping the grip portions 26 and the accelerator lever 22a to generate the driving force in the forward direction; when the lefthand accelerator lever 22b is gripped, the electric motor 19 is reversed to generate the driving force in the backward direction (specification, page 19, line 19 - page 20, line 4). The vehicle is preferably self-propelled at a speed substantially equal to human walking speed (specification, page 12, lines 16-18). In a preferred aspect of the present invention, the driving portion is comprised of an electric motor, and a power supply to the driving portion has a small capacity (specification, page 13, lines 10-13).

The vehicle shown in Fig. 1 further comprises a seat 18 which is swivelable (specification, page 22, lines 1-3) between (1) a position where the operator can sit facing forward (see Fig. 8) or a person to be conveyed can sit facing the operator during a backward run (see Fig. 4), and (2) a position where a person other than the operator can sit facing in the direction of motion during a backward run (see Fig. 5)(specification, page 10, lines 1-6). The person to be conveyed finds it easy to get on and off the vehicle because the seat can be oriented in any direction; such ease is advantageous especially when the person is aged or handicapped (specification, page 22, lines 13-16). In a preferred aspect of the present invention, the seat is made horizontally turnable by 360 degrees and can be properly fixed at a desired angular position (specification, page 11, lines 6-10).

In the embodiment shown in Figs. 4 and 5, the seat 18 has arm rests 29, 29 (specification, page 10, lines 1-2). Where the seat is equipped with arm rests, a person being conveyed on the vehicle, in particular, a partially handicapped or an elderly person, can be more safely conveyed because the person can be supported by the arm rests even when the vehicle makes a turn while running (specification, page 11, lines 1-5).

The steering portion comprises at least one steerable wheel and at least one steering handle. In the context of the embodiment shown in Fig. 1, the driving portion 11 and the steering portion 12 are disposed at the front wheel portion 39 (specification, page 6, lines 11-13). The steering portion 12 is equipped with a bar handle 21 (specification, page 7, lines 15-16). In order to steer the vehicle to the right or left, the operator can turn the bar handle 21 (specification, page 23, lines 18-20). In a preferred aspect of the invention, the handle is a steering wheel (specification, page 29, lines 11-13).

The bar handle 21 is equipped with handle stems 24, 24 (specification, page 19, line 4) which are fixed at their lower ends to hinged portions 27, 27 (see Fig. 2) and which can be turned on the hinged portions 27, 27 (specification, page 20, lines 8-14). As such, for a forward run of the vehicle, the bar handle 21 can be positioned on a back side of the front wheel 15, i.e., toward the rear wheels (see Fig. 2)(specification, page 9, lines 5-6; page 20, lines 18-21), and for a backward run, the bar handle 21 can be positioned in front of the front wheel 15 (see Fig. 3)(specification, page 9, lines 6-7; page 21, lines 3-6). The operator drives the vehicle by gripping the bar handle 21 to operate the vehicle (specification, page 7, lines 17-19). For a backward run, the operator turns the bar handle 21 toward the front wheel 15 by getting off the vehicle and by gripping the bar handle 21 at a position from the front of the front wheel 15 (specification, page 8, lines 8-12). In the embodiment shown in Fig. 1, the bar handle 21 is reversely turned toward the front wheel 15 (specification, page 8, lines 3-4).

The vehicle of the present invention can therefore be operated forward or backward by an operator riding on the vehicle, and the vehicle can be run backward with an operator not riding on the vehicle (specification, page 5, lines 4-12).

By providing a vehicle which has (1) a driving portion which can be selectively switched between a forward driving mode and a backward driving mode and (2) a swivelable seat, there is provided a device which, in the case of conveying a handicapped person or an elderly person, the operator can operate in a forward direction while being seated on the seat (specification, page 10, lines 7-10), when the operator reaches the person to be conveyed, the seat can be oriented in a direction suitable for the person to be conveyed to get on the vehicle (specification, page 11, lines 16-18), the person can be conveyed with the driving portion operating in a backward driving mode with the person being conveyed on the seat facing the operator or facing the direction of motion (specification, page 10, lines 10-14), and then the seat can be oriented in a direction which facilitates the person who has been conveyed getting off of the vehicle (specification, page 11, lines 16-18).

In the embodiment shown in Fig. 1, the self-propelled vehicle 10 comprises a front wheel portion 39 and a truck portion 37 (specification, page 6, lines 10-11). The driving portion 11 and the steering portion 12 are disposed at the front wheel portion 39 (specification, page 6, lines 11-13). The front wheel portion 39 can be removed from the truck portion 37 (specification, page 7, lines 3-5), and can be attached to another conveying means (specification, page 7, lines 10-12).

In the embodiment shown in Fig. 6, the vehicle includes a removable supporting bar for supporting the operator riding in a standing position (specification, page 11, line 21 - page 12, line 1).

Preferably, the vehicle comprises two rear wheels at a rear end portion, and the driving portion drives the steerable wheel (specification, page 14, lines 2-5).

The Applied References

1. U.S. Patent No. 4,750,578 (Brandenfels '578)

Brandenfels '578 is directed to a utility cart which can be dismantled into parts that are readily carried, and including parts that have collapsible features that permit them to be stored in small spaces (Brandenfels '578, column 1, lines 31-35). The cart includes a removable seat (Brandenfels '578, column 1, line 49) and a steering handle on the front wheeled support which can be used in an upright position as a steering handle for persons riding a cart or as a guide handle in a forwardly pivoted position for persons walking with the cart (Brandenfels '578, column 1, lines 54-58). The cart includes a circuit arrangement which maintains power to the motor when the steering handle is in an upright position or a forward pivoted position (Brandenfels '578, column 1, lines 58-61). The cart includes a belt drive that provides a free wheeling condition of the front wheel but tightens the belt when the motor is energized (Brandenfels '578, column 1, lines 61-63).

With reference to Fig. 1, there is shown a utility cart comprising a chassis member 10, a front wheeled support 12, a drive wheel 82, a pair of rear wheels 26 and handle bar supports 110 (Brandenfels '578, column 2, lines 65-68; column 3, line 5; column 3, line 57; and column 4, line 38).

The seat 16 has a main standard 46 and a vertically adjustable seat supporting stem 48 (Brandenfels '578, column 3, lines 28-29). The seat 50 can be pivoted into alignment with the stem for the purpose of compacting the seat assembly (Brandenfels '578, column 3, lines 30-33). The seat assembly is readily removable by disengagement of bolt and wing nut assemblies 56 and 62 (Brandenfels '578, column 3, lines 39-41).

A steering and control handle assembly 94 (see Figs. 2-4) is mounted on the offset extension 88 in an arrangement which allows the handle to be locked in the upright relation as shown in Figs. 1-4, or to be pivoted to a forwardly extending position as seen in Fig. 4, or to be folded down rearwardly in a position which is parallel to the fork and wheel assembly, as

shown in Fig. 6 (Brandenfels '578, column 3, line 65 - column 4, line 4).

Power drive for the front wheel 82 is achieved by an electric motor having a gear box having an output shaft which has a pulley 140 keyed thereto and arranged to drive a pulley 142 on the wheel 82 by a belt 144 (Brandenfels '578, column 5, lines 4-10). These pulleys and belt are arranged such that the belt will normally slip in a non-driving relation, and driving connection of the belt is provided by a belt tightener 148, most clearly shown in Fig. 6 (Brandenfels '578, column 5, lines 10-13).

A lever 156 controls the electrical drive of the motor 136 (Brandenfels '578, column 5, lines 25-26). Closing of the circuit to the motor and tightening of the belt are accomplished simultaneously by a microswitch 160 mounted on the fork assembly under the belt 148 in an arrangement such that as the belt tightener moves upwardly by the operation of the lever 156, it permits a spring pressed lever 162 of the switch 160 to close the circuit between the motor and the battery (Brandenfels '578, column 5, lines 26-33). Thus, when the lever 156 is depressed by the operator, the belt is tightened and the wheel powered, and when the lever 156 is released, power to the wheel is shut off and the belt tightener is released, thus allowing slippage of the belt and freewheeling of the wheel 82 (Brandenfels '578, column 5, lines 33-38).

In assembled relation, the cart is arranged to be used to transport a person either in a sit down position with the seat installed, or in a stand up scooter-type position with the seat removed (Brandenfels '578, column 6, lines 35-38).

The cart can also be used as a dolly, as shown in Fig. 4, for carrying luggage L, by unlatching the handle from its upright position and pivoting it forward so that the user can guide the cart (Brandenfels '578, column 6, lines 43-47). The user can push or pull the cart or can use the hand lever 156 to power it (Brandenfels '578, column 6, lines 47-48).

2. U.S. Patent No. 5,010,973 (Brown '973)

Brown '973 is directed to a freight carrier which includes a platform section and a power section (Brown '973, column 1, lines 28-29). The platform section includes a pair of coaxial wheels, and the power section includes a motor and a steerable single drive wheel (Brown '973, column 1, lines 28-30). The two sections are relatively adjustable vertically (Brown '973, column 1, lines 34-35).

Referring to Fig. 4, the vehicle includes a platform section 10 with wheels 11 on each

side (Brown '973, column 1, lines 63-65). A steerable wheel 12 is mounted on an L-shaped frame 13 which is positioned vertically by a guideway structure 14 (Brown '973, column 1, lines 65-67).

A column 32 is secured at one end of the platform 30, and supports a steering wheel 33 and a set of controls 34 (Brown '973, column 2, lines 24-26). Drive for the steerable traction wheel 12 is provided by a hydraulic motor 39 (Brown '973, column 2, lines 37-38).

VI. ISSUES

1. A final rejection of claims 2, 5, 6, 8, 10-12 and 14 under 35 U.S.C. 102(b) over Brandenfels '578.
2. A final rejection of claims 7, 9 and 13 under 35 U.S.C. 103 over Brandenfels '578 in view of Brown '973.
3. Separate arguments regarding claims 7 and 8.

VII. GROUPING OF CLAIMS

Each pending claim of the present application is separately patentable, and upon issuance, shall be presumed valid independently of the validity of the other claims. 35 USC §282.

Claims 7 and 8 are addressed separately from the other pending claims, as set forth below, in view of recitation in claim 7 (from which claim 8 depends) of a seat having arm rests.

The patentability of claims 2, 5, 6 and 9-14 is addressed together herein, and so for purposes of 37 C.F.R. 1.192 (c)(7), claims 2, 5, 6 and 9-14 will stand or fall together.

For purposes of 37 C.F.R. 1.192 (c)(7), claims 7 and 8 will stand or fall independently of claims 2, 5, 6 and 9-14.

VIII. ARGUMENT

Issue 1: Claims 2, 5, 6, 8, 10-12 and 14 were finally rejected under 35 U.S.C. 102(b) over Brandenfels '578

Brandenfels '578 fails to disclose or suggest a driving portion which can be selectively switched between a forward driving mode (during which the driving portion drives the vehicle forward) and a backward driving mode (during which the driving portion drives the vehicle backward), as recited in claim 14, from which each of claims 2 and 5-13 ultimately depend.

The March 8, 2002 Final Rejection contains a statement that Brandenfels '578 discloses a cart "... comprising a driving portion selectively driving the vehicle forward or backward . . ." (March 8, 2002 Final Rejection, page 2, lines 3-4 from last), and that ". . . the vehicle can be operated forward or backward by an operator riding thereon and the vehicle can be run backward with an operator not riding on the vehicle . . ." (March 8, 2002 Final Rejection, page 3, lines 1-3). However, the March 8, 2002 Final Rejection fails to contain any reference to disclosure in Brandenfels '578 which supports such statements.

Anticipation under 35 U.S.C. 102 requires that every limitation of the patent claim in issue be disclosed, either expressly or under principles of inherency, in a single prior art reference. *Corning Glass Works v. Sumitomo Elec.*, 9 USPQ2d 1962, 1965 (Fed. Cir. 1989); *Trintec Industries Inc. v. Top-U.S.A. Corp.*, 63 USPQ2d 1597, 1599 (Fed. Cir. 2002).

In a telephone interview conducted on July 2, 2002, U.S. Patent and Trademark Office representatives contended that disclosure in Brandenfels '578, column 1, lines 58-63 and column 6, lines 43-47 indicate powered drive in a forward direction and do not preclude powered drive in a backward direction.

The Applicant respectfully disagrees with the position taken by the U.S. Patent and Trademark Office on two bases. First, as discussed below, Brandenfels '578 fails to contain any disclosure or suggestion of any capability of the drive mechanism disclosed therein to be selectively switched between a forward driving mode, during which the drive mechanism powers the cart forward, and a backward driving mode, during which the drive mechanism powers the cart backward. Second, as noted above, anticipation under 35 U.S.C. 102 requires that every limitation of a patent claim in issue be disclosed, either expressly or inherently, in a single prior art reference, and it is improper for the U.S. patent and Trademark Office to

attempt to require an Applicant to demonstrate that a reference applied as an alleged anticipatory reference somehow *precludes* a modification to include a claimed feature not disclosed or suggested in the reference.

As noted above, according to Brandenfels '578, when the lever 156 is depressed by the operator, the belt is tightened and the wheel 82 is powered, and when the lever 156 is released, power to the wheel is shut off and the belt tightener is released, thus allowing slippage of the belt and freewheeling of the wheel 82 (Brandenfels '578, column 5, lines 33-38). Such disclosure indicates that the lever 156, which controls operation of the motor drive, has two positions, a depressed position and a released position. In the depressed position, the wheel is powered; in the released position, the wheel is not powered. Brandenfels '578 contains no disclosure or suggestion of modifying the cart disclosed therein so as to include any drive device which is capable of selectively driving the cart forward or backward, or a control apparatus for switching the drive between a forward driving mode and a backward driving mode.

The passages of Brandenfels '578 referred to by U.S. Patent and Trademark Office representatives during the July 2, 2002 telephone interview do not suggest a driving portion which selectively drives the cart forward or backward. The passage in Brandenfels '578, column 1, lines 58-63 merely indicates that the circuit arrangement maintains power to the motor when the steering handle is in either an upright position or a forward pivoted position, and that the belt drive tightens the belt when the motor is energized. This passage contains no disclosure of selectively driving the cart forward or backward.

Similarly, the passage in Brandenfels '578, column 6, lines 43-47 fails to disclose or suggest a driving portion which can be selectively switched between a forward driving mode and a backward driving mode. Instead, this passage merely indicates that the user can push or pull the cart (i.e., when the belt tightener is released, allowing slippage of the belt and freewheeling of the wheel 82) or can use the hand lever 156 to power the cart. The fact that the user can use the hand lever 156 to power the cart when the handle is in its upright position or when it is pivoted forward does not indicate that the cart can be selectively switched between a forward driving mode and a backward driving mode. Rather, Brandenfels '578 indicates that the cart, e.g., as shown in Fig. 1 with the handle in its upright position, can be driven forward (i.e., to the left in the Fig. 1) and when the handle is pivoted forward as shown in Fig. 4, the cart can be driven to the left in Fig. 4 by a user walking in front of the cart and

using the hand lever 156 to power the cart. There is no disclosure in Brandenfels '578 of operating the lever 156, or any other control mechanism, to a position which would cause the cart to be powered in an opposite direction.

Moreover, it is respectfully noted that it would not be possible to turn the drive wheel 82 of Brandenfels '578 180 degrees so as to drive the cart in an opposite direction (the U.S. Patent and Trademark Office has not made such an argument), because referring to Fig. 1, it can be seen that depending on which way the wheel is turned, one of the sides of the fork and axle assembly 80 would be blocked by the angled stem 164 long before the wheel was turned 180 degrees. Also, Fig. 1 shows that the drive wheel 82 would also be blocked by the top wall 20 and the battery compartment 22 (adjacent to the leads 184) before turning to such an extent.

Accordingly, Brandenfels '578 fails to disclose, either expressly or under principals of inherency, the limitation that the driving portion can be selectively switched between a forward driving mode and a backward driving mode, as recited in claim 14. Accordingly, the U.S. Patent and Trademark Office has not satisfied its burden for a rejection under 35 U.S.C. 102.

In addition, claim 14 recites a seat which is swivelable. Brandenfels '578 fails to disclose or suggest a swivelable seat.

In the March 8, 2002 Final Rejection, there is a statement to the effect that because the seat in Brandenfels '578 is removable, it must inherently be swivelable upon the dismantling of the seat (March 8, 2002 Final Rejection, page 5, lines 4-6). The March 8, 2002 Final Rejection also contains a statement that "swivelable and removable seats are well know[n] in the art (March 8, 2002 Final Rejection, page 5, lines 6-7).

The Applicant respectfully disagrees with the notion that a seat which is removable is inherently swivelable. The word "swivel" is used in the present application in accordance with its well known definition, namely, to turn as if on a device joining two parts so that one or both can pivot freely (e.g., see Appendix B, attached hereto, which is an excerpt from Webster's Ninth New Collegiate Dictionary). Even when the seat of Brandenfels '578 is removed from the cart of Brandenfels '578, it is not swivelable with respect to any element of the cart of Brandenfels '578. Accordingly, Brandenfels '578 fails to disclose, either expressly or under principals of inherency, the limitation that the seat is swivelable as recited in claim 14. Accordingly, the U.S. Patent and Trademark Office has not satisfied its burden for a

rejection under 35 U.S.C. 102.

By providing a vehicle which has (1) a driving portion which can be selectively switched between a forward driving mode and a backward driving mode and (2) a swivelable seat, there is provided a device which, in the case of conveying a handicapped person or an elderly person, the operator can operate in a forward direction while being seated on the seat (specification, page 10, lines 7-10), when the operator reaches the person to be conveyed, the seat can be oriented in a direction suitable for the person to be conveyed to get on the vehicle (specification, page 11, lines 16-18), the person can be conveyed with the driving portion operating in a backward driving mode with the person being conveyed on the seat facing the operator or facing the direction of motion (specification, page 10, lines 10-14), and then the seat can be oriented in a direction which facilitates the person who has been conveyed getting off of the vehicle (specification, page 11, lines 16-18). Furthermore, while conveying the person to be conveyed, the operator is facing toward the person being conveyed, and can therefore safely operate the vehicle while at the same time keeping the person being conveyed in his or her line of vision.

In addition, the U.S. Patent and Trademark Office fails to identify any disclosure which would motivate one of skill in the art to attempt to make the seat of Brandenfels '578 swivelable. In order to establish *prima facie* obviousness, the USPTO would need to present evidence, in the form of some teaching, suggestion, incentive or inference in the applied prior art, or in the form of generally available knowledge, that one having ordinary skill in the prior art would have been led to combine the relevant teachings of the prior art in such a way as to arrive at the claimed invention. *Ex parte Levingood*, 28 USPQ2d 1300, 1301 (Pat. Ofc. Bd. App. 1993). Accordingly, the U.S. Patent and Trademark Office has not presented evidence which would support an obviousness rejection.

Reversal of this rejection is respectfully requested.

Issue 2: Claims 7, 9 and 13 were finally rejected under 35 U.S.C. 103 over Brandenfels '578 in view of Brown '973

Brown '973 is cited for disclosure of a steering wheel 33. Brown '973 fails to disclose or suggest a driving portion which can be selectively switched between a forward driving mode and a backward driving mode, or a seat which is swivelable.

Accordingly, Brown '973 fails to overcome the shortcomings of Brandenfels '578 as

attempted to be applied against claim 14, from which each of claims 7, 9 and 13 depend.

Reversal of this rejection is respectfully requested.

Issue 3: Separate arguments regarding claims 7 and 8

Claims 7 and 8 are patentable over the applied references for the following reasons in addition to the reasons (discussed above) that claims 2, 5, 6 and 9-14 are patentable over the applied references.

Claim 7 (from which claim 8 depends) depends from claim 14 and further recites that the seat has arm rests. The March 8, 2002 Final Rejection contains a statement that "[p]roviding for seat arm rests . . . is well within the purview of one having ordinary skill in the art to provide a means for stabilizing an operator when in the standing position (March 8, 2002 Final Rejection, page 4, lines 9-10).

As apparently acknowledged by the U.S. Patent and Trademark Office, neither of the applied references discloses or suggests arm rests. Accordingly, no combination of the applied references would include arm rests. The U.S. Patent and Trademark Office cites no reference for disclosure of arm rests, nor does it provide any reasons why it deems that it would have been obvious to one of skill in the art to have modified the cart according to Brandenfels '578 so as to include arm rests. The U.S. Patent and Trademark Office instead merely states that providing for arm rests is "well within the purview of one having ordinary skill in the art."

By not citing any prior art reference which includes arm rests, it is impossible for the Applicant to respond to the assertion by the U.S. Patent and Trademark Office that it would have been obvious to modify Brandenfels '578 so as to include arm rests. In fact, there are strong reasons why it would not have been obvious to include arm rests in Brandenfels '578, because Brandenfels '578 is directed to a dismantlable and collapsible utility cart, in which the number of parts and the weight of those parts is deliberately minimized, and in which any parts which would adversely affect its collapsibility would be avoided. Furthermore, in view of the fact that the chair in Brandenfels '578 is not swivelable, the addition of arm rests would make boarding and de-boarding the seat of the cart according to Brandenfels '578 less simple.

In accordance with present invention, as noted above, where the seat is equipped with arm rests, a person being conveyed on the vehicle, in particular, a partially handicapped or an elderly person, can be more safely conveyed because the person can be supported by the arm

rests even when the vehicle makes a turn while running (specification, page 11, lines 1-5).

Accordingly, claims 7 and 8 are patentable over the applied references for the additional reason that claims 7 and 8 call for a seat with arm rests, and none of the applied references contains any disclosure which would motivate one of skill in the art to modify Brandenfels '578 so as to include a seat with arm rests.

Reversal of this rejection is respectfully requested.

IX. CONCLUSION

Accordingly, the Honorable Board of Patent Appeals and Interferences is respectfully requested to reverse the Final Rejection of claims 2 and 5-14 and the objection to the drawings and to pass this application to allowance and issuance.

The Commissioner is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to Deposit Account No. 50-1446.

Respectfully submitted,
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March 24, 2003

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